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*Documents relative
to the constitutional
agreement reached
on Nov. 5, 1981*

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DOCUMENTS RELATIVE TO
THE CONSTITUTIONAL AGREEMENT
REACHED ON NOVEMBER 5, 1981



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In an effort to reach an acceptable consensus on the constitutional issue which meets the concerns of the federal government and a substantial number of provincial governments, the undersigned governments have agreed to the following:

(1) Patriation

(2) Amending Formula:

- Acceptance of the April Accord Amending Formula with the deletion of Section 3 which provides for fiscal compensation to a province which opts out of a constitutional amendment.
- The Delegation of Legislative Authority from the April Accord is deleted.

(3) Charter of Rights and Freedoms:

- The entrenchment of the full Charter of Rights and Freedoms now before Parliament with the following changes:
 - (a) With respect to Mobility Rights the inclusion of the right of a province to undertake affirmative action programs for socially and economically disadvantaged individuals as long as a province's employment rate was below the National average.
 - (b) A "notwithstanding" clause covering sections dealing with Fundamental Freedoms, Legal Rights and Equality Rights. Each "notwithstanding" provision would require reenactment not less frequently than once every five years.
 - (c) We have agreed that the provisions of Section 23 in respect of Minority Language Education Rights will apply to our provinces.

Dans un effort pour en arriver à un consensus acceptable sur la question constitutionnelle qui satisfasse les préoccupations du gouvernement fédéral et d'un nombre important de gouvernements provinciaux, les soussignés se sont entendus sur les points suivants:

(1) Le rapatriement de la Constitution

(2) La formule d'amendement

- La formule d'amendement proposée dans l'Accord d'avril a été acceptée en supprimant l'article 3, qui prévoit une compensation fiscale à une province qui se retire d'un amendement constitutionnel.
- La délégation de pouvoirs législatifs prévue dans l'Accord d'avril est supprimée.

(3) La Charte des droits et libertés

- La Charte complète des droits et libertés soumise au Parlement sera inscrite dans la Constitution avec les modifications suivantes:
 - (a) En ce qui concerne la liberté de circulation et d'établissement, il y aura inclusion du droit d'une province à mettre en oeuvre des programmes d'action en faveur des personnes socialement et économiquement désavantagées tant que le taux d'emploi de cette province demeurera inférieur à la moyenne nationale.
 - (b) Une clause "nonobstant" s'appliquera aux articles qui traitent des libertés fondamentales, des garanties juridiques et des droits à l'égalité. Toute disposition "nonobstant" devrait être adoptée de nouveau au moins tous les cinq ans.
 - (c) Nous sommes convenus que l'article 23, qui a trait au droit à l'instruction dans la langue de la minorité, s'appliquera dans nos provinces.

(4) The provisions of the Act now before Parliament relating to Equalization and Regional Disparities, and Non Renewable Natural Resources, Forestry Resources and Electrical Energy would be included.

(5) A constitutional conference as provided for in clause 36 of the Resolution, including in its agenda an item respecting constitutional matters that directly affect the Aboriginal peoples of Canada, including the identification and definition of the rights of those peoples to be included in the Constitution of Canada, shall be provided for in the Resolution. The Prime Minister of Canada shall invite representatives of the Aboriginal peoples of Canada to participate in the discussion of that item.

(4) Les dispositions du projet actuellement à l'étude au Parlement qui ont trait à la péréquation, et aux inégalités régionales ainsi qu'aux ressources non renouvelables, aux ressources forestières et à l'énergie électrique seraient incluses.

(5) Sera prévue dans la Résolution la conférence constitutionnelle mentionnée à l'article 36 de la Résolution et son ordre du jour inclura les questions constitutionnelles qui intéressent directement les peuples autochtones du Canada, notamment la détermination et la définition des droits de ces peuples à inscrire dans la Constitution du Canada. Le Premier ministre du Canada invitera leurs représentants à participer aux travaux relatifs à ces questions.

Dated at Ottawa this 5th day
of November, 1981.

Fait à Ottawa le 5 novembre 1981.

CANADA/POUR LE CANADA

Pierre Elliott Trudeau
.....
Pierre Elliott Trudeau
Prime Minister of Canada/
Premier ministre du Canada

ONTARIO/POUR L'ONTARIO

William G. Davis
.....
William G. Davis, Premier/
Premier ministre

NOVA SCOTIA/POUR LA NOUVELLE-ECOSSE

John M. Buchanan
.....
John M. Buchanan, Premier/
Premier ministre

NEW BRUNSWICK/POUR LE NOUVEAU-BRUNSWICK

Richard B. Hatfield
.....
Richard B. Hatfield, Premier/
Premier ministre

MANITOBA/POUR LE MANITOBA

Sterling R. Lyon
.....
Sterling R. Lyon, Premier/
Premier ministre

*Subject to approval
of section 3(c) by the
Legislative Assembly
of Manitoba*

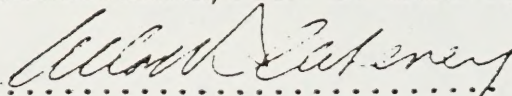
BRITISH COLUMBIA/POUR LA COLOMBIE-BRITANNIQUE

William R. Bennett
.....
William R. Bennett, Premier/
Premier ministre

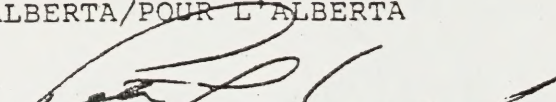
PRINCE EDWARD ISLAND/POUR L'ILE-DU-PRINCE-EDOUARD

J. Angus MacLean
.....
J. Angus MacLean, Premier/
Premier ministre

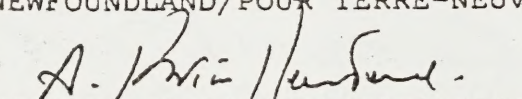
SASKATCHEWAN/POUR LA SASKATCHEWAN


.....
Allan E. Blakeney, Premier/
Premier ministre

ALBERTA/POUR L'ALBERTA


.....
Peter Lougheed, Premier/
Premier ministre

NEWFOUNDLAND/POUR TERRE-NEUVE


.....
Brian A. Peckford, Premier/
Premier ministre

FACT SHEET

The notwithstanding or override clause as applied to the Charter of Rights & Freedoms

A notwithstanding clause is one which enables a legislative body (federal and provincial) to enact expressly that a particular provision of an Act will be valid, notwithstanding the fact that it conflicts with a specific provision of the Charter of Rights and Freedoms. The notwithstanding principle has been recognized and is contained in a number of bills of rights, including the Canadian Bill of Rights (1960), the Alberta Bill of Rights (1972), The Quebec Charter of Rights and Freedoms (1975), the Saskatchewan Human Rights Code (1979), and Ontario's Bill 7 to Amend its Human Rights Code (1981).

How it would be applied

Any enactment overriding any specific provisions of the Charter would contain a clause expressly declaring that a specific provision of the proposed enactment shall operate, notwithstanding a specific provision of the Charter of Rights and Freedoms.

Any notwithstanding enactment would have to be reviewed and renewed every five years by the enacting legislature if it were to remain in force.

CONSTITUTIONAL ACCORD
CANADIAN PATRIATION PLAN

OTTAWA

April 16, 1981.

CONSTITUTIONAL ACCORD
CANADIAN PATRIATION PLAN

WHEREAS Canada is a mature and independent country with a federal system of government,

AND WHEREAS the Parliament of the United Kingdom has retained, at the request of the Parliament of Canada and with the approval of the Provinces, residual power to amend certain parts of the British North America Acts upon receiving a proper request from Canada,

AND WHEREAS it is fitting and proper for the Constitution of Canada to be amendable in all respects by action taken wholly within Canada,

AND WHEREAS the full exercise of the sovereignty of Canada requires a Canadian amending procedure in keeping with the federal nature of Canada,

NOW THEREFORE, the Governments subscribing to this Accord agree as follows:

1. To patriate the Constitution of Canada by taking the necessary steps through the Parliament of Canada and the Legislatures of the Provinces;
2. To accept, as part of patriation, the amending formula attached to this Accord as the formula for making all future amendments to the Constitution of Canada;
3. To embark upon an intensive three-year period of constitutional renewal based on the new amending formula and without delay to determine an agenda following acceptance of this Accord; and

4. To discontinue court proceedings now pending in Canada relative to the proposed Joint Address on the Constitution now before Parliament.

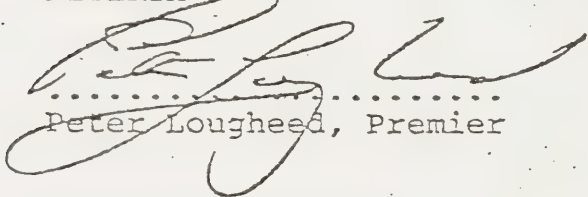
The Canadian Patriation Plan is conditional upon the Government of Canada withdrawing the proposed Joint Address on the Constitution now before Parliament and subscribing to this Accord.

The Provinces of New Brunswick and Ontario are invited to sign this Accord.

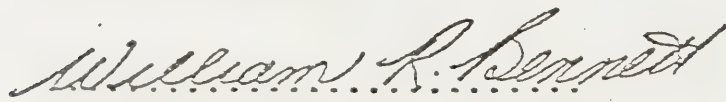
Dated at Ottawa this 16th day of April, 1981.

Signed on behalf of the under-mentioned Governments, to be followed by ratification by the respective Legislatures or National Assembly.

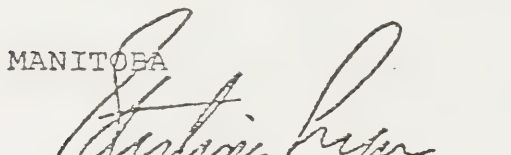
ALBERTA


Peter Lougheed, Premier

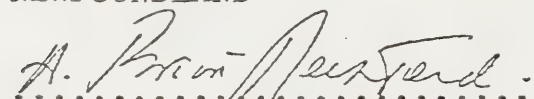
BRITISH COLUMBIA


William R. Bennett, Premier

MANITOBA


Sterling R. Lyon, Premier

NEWFOUNDLAND


Brian A. Peckford, Premier

.....
John M. Buchanan, Premier

PRINCE EDWARD ISLAND

.....
J. Angus MacLean, Premier

QUÉBEC

.....
René Lévesque, Premier

SASKATCHEWAN

.....
Milan E. Blakeney, Premier

SIGNED ON BEHALF OF THE GOVERNMENTS OF:

NEW BRUNSWICK

.....
Richard B. Hatfield, Premier

ONTARIO

.....
William G. Davis, Premier

ACCEPTED ON BEHALF OF THE GOVERNMENT OF CANADA:

.....
Pierre E. Trudeau, Prime Minister

AMENDING FORMULA FOR THE CONSTITUTION OF CANADA

1. (1) Amendments to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada when so authorized by:
 - (a) resolutions of the Senate and House of Commons; and
 - (b) resolutions of the Legislative Assemblies of at least two-thirds of the provinces that have in the aggregate, according to the latest decennial census, at least fifty per cent of the population of all of the provinces.
- (2) Any amendment made under subsection (1) derogating from the legislative powers, the proprietary rights or any other rights or privileges of the Legislature or government of a province shall require a resolution supported by a vote of a majority of the Members of each of the Senate, of the House of Commons, and of the requisite number of Legislative Assemblies.
- (3) Any amendment made under subsection (1) derogating from the legislative powers, the proprietary rights, or any other rights or privileges of the Legislature or government of a Province shall not have effect in any province whose Legislative Assembly has expressed its dissent thereto by resolution supported by a majority of the Members prior to the issue of the proclamation, provided, however, that Legislative Assembly, by resolution supported by a majority of the Members, may subsequently withdraw its dissent and approve the amendment.

2. (1) No proclamation shall issue under section 1 before the expiry of one year from the date of the passage of the resolution initiating the amendment procedure, unless the Legislative Assembly of every province has previously adopted a resolution of assent or dissent.
- (2) No proclamation shall issue under section 1 after the expiry of three years from the date of the passage of the resolution initiating the amendment procedure.
- (3) Subject to this section, the Government of Canada shall advise the Governor General to issue a proclamation forthwith upon the passage of the requisite resolutions under this Part.
3. ~~In the event that a province dissents from an amendment conferring legislative jurisdiction on Parliament, the Government of Canada shall provide reasonable compensation to the government of that province, taking into account the per capita costs to exercise that jurisdiction in the provinces which have approved the amendment.~~
4. Amendments to the Constitution of Canada in relation to any provision that applies to one or more, but not all, of the provinces, including any alteration to boundaries between provinces or the use of the English or the French language within that province may be made only by proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and the Legislative Assembly of every province to which the amendment applies.

5. An amendment may be made without a resolution of the Senate authorizing the issue of the proclamation if, within one hundred and eighty days after the passage by the House of Commons of a resolution authorizing its issue, the Senate has not passed such a resolution and if, after the expiration of those one hundred and eighty days, the House of Commons again passed the resolution, but any period when Parliament is dissolved shall not be counted in computing the one hundred and eighty days.
6. (1) The procedures for amendment may be initiated by the Senate, by the House of Commons, or by the Legislative Assembly of a province.
(2) A resolution authorizing an amendment may be revoked at any time before the issue of a proclamation.
(3) A resolution of dissent may be revoked at any time before or after the issue of a proclamation.
7. Subject to sections 9 and 10, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons.
8. Subject to section 9, the Legislature of each province may exclusively make laws amending the constitution of the province.
9. Amendments to the Constitution of Canada in relation to the following matters may be made only by proclamation issued by the Governor General under the Great Seal of

Canada when authorized by resolutions of the Senate and House of Commons and of the Legislative Assemblies of all of the provinces:

- (a) the office of the Queen, of the Governor General or of the Lieutenant Governor;
- (b) the right of a province to a number of members in the House of Commons not less than the number of Senators representing the province at the time this provision comes into force;
- (c) the use of the English or French language except with respect to section 4;
- (d) the composition of the Supreme Court of Canada;
- (e) an amendment to any of the provisions of this Part.

10. Amendments to the Constitution of Canada in relation to the following matters shall be made in accordance with the provisions of section 1(1) of this Part and sections 1(2) and 1(3) shall not apply.

- (a) the principle of proportionate representation of the provinces in the House of Commons;
- (b) the powers of the Senate and the method of selection of members thereto;
- (c) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;

(d) the Supreme Court of Canada, except with respect to clause (d) of section 9;

(e) the extension of existing provinces into the Territories;

(f) notwithstanding any other law or practice, the establishment of new provinces;

(g) an amendment to any of the provisions of Part B.

11. A constitutional conference composed of the Prime Minister of Canada and the First Ministers of the provinces shall be convened by the Prime Minister of Canada within fifteen years of the enactment of this Part to review the provisions for the amendment of the Constitution of Canada.

PART B

DELEGATION OF LEGISLATIVE AUTHORITY

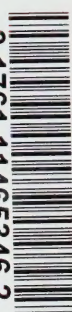
1. Notwithstanding anything in the Constitution of Canada, Parliament may make laws in relation to a matter coming within the legislative jurisdiction of a province, if prior to the enactment, the Legislature of at least one province has consented to the operation of such a statute in that province.
2. A statute passed pursuant to section 1 shall not have effect in any province unless the Legislature of that province has consented to its operation.
3. The Legislature of a province may make laws in the province in relation to a matter coming within the legislative jurisdiction of Parliament, if, prior to the enactment, Parliament has consented to the enactment of such a statute by the Legislature of that province.
4. A consent given under this Part may relate to a specific statute or to all laws in relation to a particular matter.
5. A consent given under this Part may be revoked upon giving two years' notice, and
 - (a) if the consent was given under section 1,

any law made by Parliament to which the consent relates shall thereupon cease to have effect in the province revoking the consent, but the revocation of the consent does not affect the operation of that law in any other province;

(b) if the consent was given under section 3, any law made by the Legislature of a province to which the consent relates shall thereupon cease to have effect.

6. In the event of a delegation of legislative authority from Parliament to the Legislature of a province, the Government of Canada shall provide reasonable compensation to the government of that province, taking into account the per capita costs to exercise that jurisdiction.
7. In the event of a delegation of legislative authority from the Legislature of a province to Parliament, the government of the province shall provide reasonable compensation to the Government of Canada, taking into account the per capita costs to exercise that jurisdiction.

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